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Mass Incarceration: The Silence of Judges: A Response

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As Judge Rakoff rightly pointed out in his [April 10 speech](#) at Harvard Law School, criminal justice reform has long been a focus of the American Bar Association. Most of the groundwork for our efforts has been accomplished by the ABA [Criminal Justice Section](#), which is comprised of prosecutors, defense lawyers, judges, legal scholars, and others. Our work in this area gained traction when U.S. Supreme Court Justice Anthony Kennedy challenged lawyers on this issue at the ABA's 2003 Annual Meeting.

Over the years, the ABA has adopted numerous policies and advocated before legislative bodies on issues related to sentencing, alternatives to incarceration, specialized courts, community resources aimed at deterring youth from crime, drug and alcohol treatment, and early intervention focused on the mental health needs of persons coming into contact with the criminal justice system.

For 40 years, the ABA Criminal Justice Standards have supported appropriate [judicial discretion in sentencing](#). We have steadfastly opposed mandatory minimum sentences, which have been a significant factor in the rapid increase of our prison population in the last 30 years. In 2010, the ABA worked to get the Fair Sentencing Act passed to reduce the sentencing disparity between crack and powder cocaine.

Major obstacles that threaten ex-offenders' chances to become successful members of their communities are the collateral consequences of convictions. In conjunction with the National Institute of Justice and the U.S. Department of Justice, the ABA in December 2014 launched the [National Inventory of the Collateral Consequences of Conviction](#), an interactive, state-by-state database documenting the more than 45,000 state and 1,100 federal laws that limit an ex-offender's ability to successfully re-enter society. This database will help lawyers provide more informed counsel to clients and provide lawmakers, advocacy groups, judges, and the public with accurate information about the scope of collateral consequences.

This week, during the ABA's annual grassroots lobbying event on Capitol Hill, more than 350 bar leaders from 50 states will be meeting with members of Congress to support issues of importance to the legal community. Among them is [our support](#) for reauthorization of the Juvenile Justice and Delinquency Prevention Act and the Smarter Sentencing Act. The reauthorized juvenile justice act supports

proven programs to prevent and reduce juvenile crime, community- and family-based alternatives to jail for non-criminal misbehaving youth, and early intervention for youth with mental health and behavioral problems. The reauthorized sentencing act would reduce the length of mandatory minimums for nonviolent drug offenders, modify the federal safety valve to provide sentencing judges with discretion to sentence below mandatory minimum floors in qualified cases, and give retroactive effect to the 2010 Fair Sentencing Act.

The ABA will continue our work to fix problems in the justice system. We welcome the help of lawmakers to build on past legislative reforms that will end mandatory minimum sentences, address mass incarceration, and revise unfair collateral consequences statutes.



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